

## MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS AND DISTRICT COMMANDS

SUBJECT: Revision to Project Management Guidance Letter No. 11, Provision of Non-Federal Cash for Construction of Civil Works Projects and Separable Elements

## 1. References:

- a. ER 1165-2-29, dated 18 November 1987, subject: General Credit for Flood Control.
- b. ER 1165-2-18, dated 1 February 1989, subject: Reimbursement for Non-Federal Participation in Civil Works Projects.
- c. ER 1165-2-131, dated 15 April 1989, subject: Local Cooperation Agreements for New Start Construction Projects.
- d. U.S. Army Audit Agency (USAAA) Report WE91-203, dated 4 September 1991, subject: Cost Sharing of Civil Works Project Construction, U.S. Army Corps of Engineers.
- e. CECW-LM/CECW-PR Memorandum, dated 8 March 1991, subject: Project Management Guidance Letter No. 10, Credits for Work-in-Kind Performed by Non-Federal Sponsors.
- f. CECW-L/CEMP-M Memorandum, dated 8 March 1991, subject: Project Management Regulation.
- g. CECW-LM Memorandum, dated 9 August 1991, subject: Project Management Guidance Letter No. 11, Provision of Non-Federal Cash for Construction of Civil Works Projects.
- h. Assistant Secretary of the Army (Civil Works) (ASA(CW)) Memorandum to the Inspector General, dated 3 March 1992, subject: Resolution of Disagreement, USAAA Audit Report WE91-203.
- i. CECW-LM Memorandum, dated 15 July 1992, subject: Provision of Non-Federal Cash for Projects and Separable Elements Initiated Before 1986 and Under Construction.

2. In reference 1.d., USAAA identified a number of instances in which a sponsor's funds were not made available and obligated in a timely fashion. USAAA found that in such instances Federal funds have been inappropriately substituted for non-Federal funds. USAAA further found that, for several projects or separable elements that were initiated before the applicable date specified in the Water Resources Development Act of 1986, Public Law 99-662, and that are still under construction (pre-1986 projects and separable elements), the methods for computing and collecting the sponsors' annual cash contributions are not consistent with current practice, as reflected in Appendix B of reference 1.c. and described in detail in reference 1.g. (Appendix B procedures). In reference 1.h., ASA(CW) agreed to apply Appendix B procedures prospectively to all projects and separable elements except where the Government is already bound to do otherwise by contractual agreements with non-Federal sponsors. In reference 1.i., notice of the ASA(CW) position was provided to MSCs.

## 3. Enclosure 1 provides guidance on the following:

- a. The universe of construction projects and separable elements to which Appendix B procedures apply (Appendix B projects and separable elements). Appendix B projects and separable elements include all post-1986 projects and separable elements and certain pre-1986 projects and separable elements, as discussed in paragraph 2. above;

b. Cash computation and collection procedures applicable to all projects and separable elements. Where necessary, Appendix B procedures are distinguished from cash computation and collection procedures applicable to non-Appendix B projects and separable elements. Appendix B procedures involve Federal and non-Federal cash contributions in equal proportions in each fiscal year, except that the non-Federal share of sunk engineering and design costs is contributed in the first fiscal year of construction.

c. Procedures, for pre-1986 Appendix B projects and separable elements, to transition from previous cash computation and collection procedures to Appendix B procedures between Fiscal Year 1992 and Fiscal Year 1993.

4. This memorandum, including enclosure 1, revises reference 1.g.

FOR THE DIRECTOR OF CIVIL WORKS:

/s/

WILLIAM R. DAWSON  
Acting Chief, Project Management Division  
Directorate of Civil Works

#### **GUIDANCE ON COMPUTATION AND COLLECTION PROCEDURES FOR NON-FEDERAL CASH**

1. Universe of Appendix B projects and separable elements. Appendix B procedures apply to all projects and separable elements, except for pre-1986 projects and separable elements for which:

- a. Federal appropriations are not scheduled beyond Fiscal Year 1993; or
- b. The sponsor is not required to make contributions of cash and/or work-in-kind during construction or has already made all required contributions of cash and/or work-in-kind; or
- c. HQUSACE has approved in writing a MSC's request for a waiver of Appendix B procedures for the project or separable element upon a finding that the law and/or an agreement executed pursuant to Section 221 of the Flood Control Act of 1970, Public Law 91-611, explicitly specifies the method for computing and collecting cash contributions.

2. Cash computation and collection procedures. The policies in this paragraph apply to all construction projects and separable elements unless otherwise specified. For multipurpose projects and separable elements, this paragraph applies to each project purpose.

a. The project manager (PM) should assure that actual and estimated contract and in-house costs and approved and estimated values for LERRD credits are kept current. As contracts are awarded, in-house costs are incurred, and credits are afforded for LERRDs, the PM should: a) assure that actual approved costs and credits are recorded in the accounting system; b) revise the estimates of costs and credits; c) revise the estimate of the sponsor's total cash share, in both dollars and percent; and d) assure that the sponsor's cash share is made available to the Government and obligated in accordance with this paragraph.

1. For Appendix B projects and separable elements, proportional Federal/non-Federal cash funding of fiscal obligations for construction is required. This means that the sponsor's funds must be made available and obligated so that, at any point in time, the ratio of cumulative obligations of non-Federal funds to cumulative obligations of all funds is the same as the currently estimated ratio of ultimate obligations of non-Federal funds to ultimate obligations of all funds. As shown in Appendix B, the sponsor's cash share in a given fiscal year is derived from the estimate for the sponsor's overall cash share,

and is not affected dollar-for-dollar by changes in the estimated amount of credits for LERRDs in that fiscal year. However, credits afforded under sub-paragraphs 2.e., 2.f., and 2.g. are applied dollar-for-dollar against cash requirements.

2. For pre-1986 projects and separable elements not in the Appendix B universe by virtue of approval of a waiver under sub-paragraph 1.c., the law and/or a Section 221 agreement specifies the method for computing and collecting cash contributions.

b. For all projects and separable elements, the non-Federal funds to be obligated for construction in each fiscal year must be made available to the Government prior to the beginning of that fiscal year, except that the non-Federal funds to be obligated in the first fiscal year of construction must be made available in full prior to the opening of bids for the initial construction contract. If the award of the initial construction contract is scheduled for September of the first fiscal year of construction, the sponsor's share for that fiscal year and the sponsor's share for the following fiscal year should be requested to be made available simultaneously, and bids on the initial contract may not be opened until the sponsor has made available its shares for both fiscal years. The sponsor may make its funds available in the form of cash or, if specified in the agreement or assurances of local cooperation, an approved escrow account or a letter of credit. Throughout the fiscal year the Government is to draw from the sponsor's funds incrementally as needed for each fiscal obligation. Fiscal obligations include one-time obligations to be made toward a lump-sum contract, periodic obligations to be made toward a continuing contract, and obligations to be made toward in-house costs.

1. For Appendix B projects and separable elements, the sponsor's initial share of funds expected to be obligated for construction through the end of the first fiscal year of construction includes the sponsor's share of "sunk" contract and in-house obligations, including: all funds obligated for Advance Engineering and Design (AE&D); all funds obligated for Preconstruction Engineering and Design (PED); and all funds obligated for Continuing Planning and Engineering (CP&E) on or after October 1, 1985. If the initial share exceeds total fiscal obligations remaining to be made in the first fiscal year of construction, non-Federal funds alone should be obligated in the remainder of the first fiscal year of construction and in subsequent fiscal years until the correct non-Federal percent share of cumulative fiscal obligations, as defined in sub-paragraph 2.a.1., is attained. An example, in the format of Appendix B, is provided at attachment A to illustrate how to compute Federal and non-Federal shares in this circumstance.

c. At all times after attainment of the correct non-Federal percent share of cumulative fiscal obligations, as defined in sub-paragraph 2.a.1. or 2.a.2., as applicable, the District should continue to obligate the sponsor's funds at a rate such that the non-Federal percent share of cumulative fiscal obligations remains correct, based on updated estimates of costs and credits. So long as the sponsor's correct share of cumulative fiscal obligations has been attained and is maintained, the share of cumulative funds obligated represented by non-Federal funds need not be identical among incremental fiscal obligations or across cost accounts. When the PM updates the estimates of costs and credits, he/she should determine whether the sponsor's share of cumulative fiscal obligations is correct, and should remedy any deviation from the correct amount by adjusting the Government's and sponsor's shares of the next fiscal obligation.

d. If at any time the estimate for the total non-Federal funds to be obligated for construction through the end of the current fiscal year increases, the sponsor immediately should be requested to make the necessary additional funds available to the Government for obligation.

e. Work performed by a non-Federal public entity at a Federal water resources project for the flood control project purpose is authorized under Section 104 (General Credit for Flood Control) of the Water Resources Development Act of 1986, Public Law 99-662, and must be approved by ASA(CW). Any credit for Section 104 work involves obligating and expending Federal funds in lieu of non-Federal funds or making direct payments to a sponsor; consequently, all crediting for Section 104 work is subject to the availability of Federal funds. Crediting toward flood control costs for Section 104 work involves two basic steps: 1) determination of the credit amount; and 2) application of the credit. The credit amount should be determined and the credit should be applied in accordance with the following procedures.

1. Until such time as the District has determined the credit amount (see sub-paragraph 2.e.2.) and has begun to apply the credit (see sub-paragraph 2.e.3.), the sponsor must continue to make available prior to each fiscal year, and the District will continue to obligate and expend, the sponsor's full cash share for fiscal obligations anticipated to be made toward flood control costs in the fiscal year, including fiscal obligations anticipated to be made as a consequence of crediting.

2. The Government may accept Section 104 work after the work has been approved by ASA(CW) and performed, and after the agreement for the project or separable element has been executed. Immediately after Government acceptance of the Section 104 work, the District will determine the estimated credit amount, that is, the estimated amount of the Section 104 work assigned to flood control costs. The estimated credit amount will be included in flood control costs for the fiscal year that the Government accepts the work. The Government will audit the work as soon as practicable after acceptance of the work, and the District will finalize the credit amount in accordance with the results of the audit and in accordance with references 1.a. and 1.e. The Government may choose to separately accept an independent increment of the total work performed, after which the District in turn would determine the estimated credit amount for the increment, audit the increment, and finalize the credit amount for the increment.

3. As soon as possible after the estimated credit amount has been determined, the District should begin to apply the credit toward the sponsor's contributions for flood control costs at the time those contributions would have been made. Credit should be applied in a timely manner to ensure to the maximum extent possible that the entire estimated or finalized credit amount, as the case may be, is applied. In all cases credit is to be applied toward the sponsor's additional cash share, that is, the cash share for flood control costs other than the 5 percent cash share required by law for structural flood control costs, in accordance with sub-paragraph 2.e.3.a. below. In addition, credit is to be applied toward the sponsor's LERRD contributions for flood control, in accordance with sub-paragraph 2.e.3.b. or sub-paragraph 2.e.3.c. below, only if necessary to ensure application of the entire estimated or finalized credit amount, as the case may be. Total credit applied in accordance with sub-paragraph 2.e.3. may not exceed the estimated or finalized credit amount, as the case may be.

a. Credit is applied first toward the additional cash share for flood control costs in the then-current fiscal year. The District should not obligate the sponsor's funds, other than the required 5 percent for structural flood control costs, until the estimated or finalized credit amount, as the case may be, is fully applied. If the estimated or finalized credit amount, as the case may be, exceeds the amount of the sponsor's funds remaining to be obligated, the sponsor's funds that are obligated toward flood control costs but not yet expended should be deobligated and additional Federal funds obligated in their place. Any portion of the estimated or finalized credit amount, as the case may be, that cannot be applied in the fiscal year of assignment is carried over and applied toward the sponsor's additional cash share for flood control costs in the next occurring fiscal year or fiscal years. The credit is applied by reducing the amount to be made available by the sponsor and obligated toward flood control costs, up to the credit amount carried over, that is, until the credit amount is fully applied.

b. If the District estimates that some portion of the estimated or finalized credit amount, as the case may be, will otherwise not be applied by the end of the period of construction, that portion will be applied toward LERRDs required for the flood control purpose (flood control LERRDs) by the Government assuming financial responsibility for flood control LERRDs. The Government will assume financial responsibility for flood control LERRDs by the District making payments to the sponsor for flood control LERRD items (including incidental acquisition-related items) until the District estimates with reasonable certainty that the estimated or finalized credit amount, as the case may be, will be fully applied. Once the item has been contributed to the project or separable element by the sponsor and the value or cost of the item, as appropriate, has been approved by the District, the amount of the payment or payments for the item should be no greater than the item's approved value or approved cost, as the case may be. No payment for a flood control LERRD item may be made unless supported by approved value or approved cost, as the case may be.

c. In lieu of the method in sub-paragraph 2.e.3.b., the Government may when necessary assume financial responsibility for flood control LERRDs by the District performing flood control LERRD responsibilities. This alternative method is permissible only if provided for in an agreement between the Government and the sponsor of the project or separable element.

4. If any portion of the finalized credit amount determined by the District exceeds the sum of the value of flood control LERRDs plus the sponsor's additional cash share, the excess finalized credit amount cannot be applied and is a part of flood control costs borne entirely by the sponsor.

f. Work by a non-Federal public entity at a Federal water resources project is authorized under Section 215 (Reimbursement for Non-Federal Expenditures) of the Flood Control Act of 1968, Public Law 90-483, as amended, and is approved by ASA(CW) and performed under the terms of an agreement between the Department of the Army and the non-Federal public entity. The amount of credit/reimbursement for Section 215 work should be determined in accordance with the procedures for Section 104 work (see sub-paragraph 2.e.) and the credit for Section 215 work should be applied in accordance with those procedures. However, the following deviations from sub-paragraph 2.e. apply to determining the amount of credit/reimbursement and to applying the credit under Section 215.

1. The credit/reimbursement amount per project under the authority of Section 215 is limited to \$3 million or one percent of flood control costs, whichever is greater, up to a maximum of \$5 million.

2. After audit of the Section 215 work the District will finalize the credit/reimbursement amount in accordance with the results of the audit and in accordance with references 1.b. and 1.e.

3. Section 215 work is not limited to the flood control project purpose. The credit/reimbursement amount of approved Section 215 work assigned to each project purpose is applied toward the sponsor's cash share for that project purpose, other than the required 5 percent share for structural flood control, and, only if necessary to ensure full application of the entire credit/reimbursement amount, is applied toward LERRDs for that purpose.

4. If the finalized credit/reimbursement amount exceeds the value of the sponsor's contributions toward the applicable project purposes, then at the completion of construction the excess is to be reimbursed to the sponsor, subject to the availability of Federal funds.

g. The amount of any work-in-kind (other than Section 104 work or Section 215 work) that has been authorized, provided for in the assurances or agreement for the project or separable element, and accepted by the Government is considered a total project cost. See reference 1.e. Any excess of cash and non-Section 215, non-Section 104 work-in-kind over the sponsor's required cash share is to be reimbursed to the sponsor under the terms of the assurances or agreement.

h. In the event that a sponsor fails to make available the funds required in accordance with paragraph 2., the MSC commander should immediately notify CECW-LM of such failure.

3. Transition to Appendix B procedures. Any pre-1986 Appendix B project or separable element, for which non-Appendix B cash computation and collection procedures have not been used heretofore, must comply with Appendix B procedures beginning with Fiscal Year 1993. This paragraph describes procedures to transition to Appendix B procedures beginning with Fiscal Year 1993.

a. As soon as practicable, the PM should estimate total project costs through 30 September 1992. The following line items should be estimated:

1. Fiscal obligations toward Government contract and in-house costs through 30 September 1992;

2. Credit for the value of lands, easements, and rights-of-way contributed to the project or separable element by the sponsor, including excavated material disposal areas, and of relocations performed by the sponsor for the project or separable element, through 30 September 1992;

3. The estimated or finalized credit amount, as the case may be, determined for Section 104 work or Section 215 work in accordance with sub-paragraph 2.e. or sub-paragraph 2.f., respectively, through 30 September 1992, including the credit amount applied toward flood control costs or total project costs, respectively, and the credit amount remaining to be applied; and

4. The amount of any work-in-kind, other than Section 104 work or Section 215 work, that has been authorized, is provided for in the assurances or agreement for the project or separable element, and accepted by the Government through 30 September 1992.

b. Based on the estimated total project costs through September 30, 1992, the PM should estimate the required amount of the sponsor's cash contributions to be made available and obligated through 30 September 1992, using the computation procedure heretofore applied to the project or separable element. The PM should assure that the sponsor has made this amount available in a timely manner for obligation through 30 September 1992.

c. Concurrently with carrying out the steps in sub-paragraphs 3.a. and 3.b., the PM should estimate total project costs remaining after 30 September 1992, broken out among contract and in-house costs, LERRDs, Section 104 or Section 215 work, and other work-in-kind. The PM should apply Appendix B procedures to the remaining total project costs, using Fiscal Year 1993 as the first fiscal year, to compute the sponsor's cash contributions in each of the remaining fiscal years of construction.

d. The PM should request that total project costs through 30 September 1992 be audited in Fiscal Year 1993. Upon completion of the audit the PM should compute actual total project costs through 30 September 1992, broken out as above; the sponsor's cash contributions through 30 September 1992; and the excess or shortfall in the sponsor's cash contributions, using the computation procedure heretofore applied to the project or separable element. Any post-audit adjustments for an excess or a shortfall should be reflected in the amounts of Federal and non-Federal funds obligated in Fiscal Year 1993.

Example of Federal/Non-Federal Allocation of Funds (\$000)  
Where the Initial Non-Federal Share Exceeds Fiscal Obligations  
Remaining in the First Fiscal Year of Construction

Structural Flood Control Project or Separable Element

YEAR	TPC <sup>1</sup>	Scheduled Non-Federal LERRDS	Scheduled Construction Obligations	Construction Percentage <sup>2</sup>	Non- Federal Funds Available <sup>3</sup>	Non- Federal Funds Obligated <sup>3</sup>	Federal Construction Funds Obligated <sup>4</sup>
Prior	2545	465	2080 <sup>5</sup>		0	0	2080
1A <sup>6</sup>	550	500	50 <sup>5</sup>		0	0	50
1B <sup>7</sup>	560	500	60	24.3 <sup>8</sup>	170	60 <sup>9</sup>	0
2A <sup>10</sup>	220	100	120	19.3 <sup>11</sup>	135	120	0
2B <sup>12</sup>	2135	515	1620		0	125	1495
3	3140	0	3140	34.8	245	245	2895
4	1950	0	1950	21.6	150	150	1800
Total	11100	2080	9020	100.0	700 <sup>14</sup>	700 <sup>14</sup>	8320

Notes

1/ Total project costs = non-Federal LERRD + construction obligations.

2/ Construction obligations scheduled for each FY, expressed as a percent of total construction obligations, e.g. in year 3, \$3140K/\$9020K = 34.8 percent.

3/ Where the initial non-Federal share exceeds fiscal obligations remaining in the first fiscal year of construction, non-Federal funds made available for construction are displayed separately from non-Federal funds obligated for construction in order to track the unobligated carryover. Non-Federal cash amount made available each fiscal year is based on total non-Federal cash X percentage, e.g. in year 3, \$700K X .348 = \$245K.

4/ Federal construction obligations = total construction obligations - non-Federal construction obligations.

5/ Represents sunk PED costs.

6/ First FY of construction prior to award of the first construction contract.

7/ First FY of construction after award of the first construction contract.

8/ Construction obligations scheduled for FY PRIOR, FY 1A, and FY 1B, expressed as a percent of total construction obligations.

9/ \$110K is carried over and applied toward the first \$110K of contract and in-house obligations in FY 2.

10/ Second FY up to the point where the non-Federal cash share is attained. At this point cumulative construction obligations are \$2310K (25.6 pct. of total construction obligations), and cumulative obligations of non-Federal funds are \$180K (25.6 pct. of total non-Federal cash contributions).

11/ Construction obligations scheduled for FY 2 (\$120K + \$1620K), expressed as a percent of total construction obligations.

12/ Remainder of second FY of construction.

13/ All totals rounded to three significant figures.

14/ Sponsor's cost share is \$2780K (25 percent of TPC). Cash share is \$700K (\$2780K minus \$2080K LERRD) (6.3 percent of TPC).

Attachment A to Enclosure 1